

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)
)
)
)
Plaintiff,)
)
v.)
)
)
TYSON FOODS, INC., et al.,)
)
)
)
Defendants.)

Case No. 05-cv-329-TCK-SAJ

**PLAINTIFF STATE OF OKLAHOMA'S MOTION FOR ENTRY OF PROPOSED
CONFIDENTIALITY ORDER AND BRIEF IN SUPPORT THEREOF**

COMES NOW Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA ("the State"), and respectfully requests that this Court enter its proposed confidentiality order, attached as Exhibit A hereto. In support of its motion, the State states:

1. On August 19, 2005, the State filed its Amended Complaint against the Poultry Integrator Defendants, seeking to hold the Poultry Integrator Defendants accountable for their past and continuing improper management and disposal of poultry waste within Arkansas and Oklahoma — conduct which has caused pollution of the Oklahoma portion of the Illinois River Watershed ("IRW").

2. On April 28, 2006, the parties exchanged their respective Fed. R. Civ. P. 26(a) disclosure statements. On May 26, 2006, the parties are scheduled to make the materials described on those Fed. R. Civ. P. 26(a) disclosure statements available for review. Further, discovery has commenced in this action.

3. It is anticipated that one or more of the parties may wish to designate documents containing information protected from disclosure by statute (i.e., sensitive personal information, trade secrets, or confidential research, development, or commercial information) as confidential, and have such documents protected by a confidentiality order. *See* Fed. R. Civ. P. 26(c)(7).

4. While the State obviously does not object to the appropriate protection of documents that are legitimately entitled to protection by statute, it is critical to the smooth and efficient running of this litigation and the public interest, that there not be an over-designation of confidentiality claims.

5. Indeed, as set forth in LCvR79.1(a):

It is the policy of this Court that sealed documents, confidentiality agreements, and protective orders are disfavored. Sealed documents and confidentiality agreements may be approved by the Court only upon a showing that a legally protected interest of a party, non-party or witness outweighs the compelling public interest in disclosure of records. All protective orders dealing with confidentiality must be approved by a magistrate judge and filed of record.

(Emphasis added.)

6. Attached as Exhibit A is the confidentiality order proposed by the State. This order is nearly verbatim from the standard confidentiality order approved for use by the United States District Court for the District of South Carolina. *See* www.scd.uscourts.gov/DOCS/confidential/confidentialityorder.pdf. This proposed confidentiality order provides the following procedure for the designation of confidentiality:

Any party may designate documents as confidential but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information. The certification shall be made concurrently with the disclosure of the documents, using the form attached hereto at Attachment A which shall be executed subject to the standards of Rule 11 of the Federal Rules of Civil Procedure. Information or documents which are available in the public sector may not be designated as confidential.

Exhibit A, ¶ 3. Further, this proposed confidentiality order provides an orderly procedure for the challenges to confidentiality designations:

Any CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

a. The burden of proving the necessity of a Confidential designation remains with the party asserting confidentiality.

b. A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the Confidential designation.

c. Notwithstanding any challenge to the designation of documents as confidential, all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

(1) the party who claims that the documents are confidential withdraws such designation in writing;

(2) the party who claims that the documents are confidential fails to move timely for an Order designating the documents as confidential as set forth in paragraph 8.b. above; or

(3) the court rules that the documents should no longer be designated as confidential information.

d. Challenges to the confidentiality of documents may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

Exhibit A, ¶ 8.¹ Finally, this proposed confidentiality order provides appropriate protection to materials legitimately designated as confidential. *See* Exhibit A, ¶¶ 5, 6 & 9.

7. This proposed confidentiality order affords appropriate protection to legitimately confidential materials, but at the same time contains appropriate safeguards against abuses of claims of confidentiality. Further, it is straightforward and compliance would put no undue burdens on the parties. Finally, and most importantly, it is wholly in accord with the policies of this Court on confidentiality. Entry of this proposed confidentiality order will speed the

¹ It is important to note that the burden of proving confidentiality never shifts from the party asserting the claim of confidentiality.

discovery process, as well as the ultimate trial of this matter.

8. The parties have attempted to arrive at an agreed upon confidentiality order. The parties, however, have been unable to reach an agreement. Accordingly, counsel for the State is informed that the Poultry Integrator Defendants object to this motion.

WHEREFORE, premises considered, the State respectfully requests that this Court enter the proposed confidentiality order attached as Exhibit A hereto.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that on this 10th day of May, 2006, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants.

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